

ADVISORY OPINION 2004-009

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

December 29, 2004

Mr. William A. Thielen
General Counsel
Kentucky League of Cities
101 East Vine Street, Suite 600
Lexington, Kentucky 40507-3700

Dear Mr. Thielen:

This is in reference to your December 7, 2004 letter requesting an advisory opinion concerning whether, as a candidate for election to the post of Trustee for the Kentucky Retirement Systems, you are subject to campaign finance regulation as defined under KRS Chapter 121. You explain that you currently serve as General Counsel to the Kentucky League of Cities, a nonstock, nonprofit corporation, which intends to use its resources to promote your candidacy. Therefore, you ask the following questions:

- 1. Am I subject to the campaign finance reporting requirements that apply to candidates for public office?**

The answer to your question is no. As expressed in the Registry's Advisory Opinion 2004-008, issued simultaneously to this opinion, elections for the board of trustees of the Kentucky Retirement Systems are governed by KRS 61.645(4), which provides that "trustees selected by the membership of each of the various retirement systems shall be elected by ballot ... distributed to eligible voters by mail..." KRS Chapter 121, which governs the campaign finance requirements for candidates for nomination or election to Kentucky public office, pursuant to KRS 121.015(2), defines "election" as "any primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election." (Emphasis added.)

The election for the board of trustees of the Kentucky Retirement System is not a "primary, regular or special election" within the meaning of KRS 121.015(2). Therefore, the requirements of KRS Chapter 121 do not apply to candidates or nominees for the office of Trustee to the Kentucky Retirement Systems Board of Trustees.

2. Is the Kentucky League of Cities prohibited by Section 150 of the Kentucky Constitution, KRS 121.025 and KRS 121.035 from utilizing its resources (website postings, electronic and regular mailings, broadcast facsimiles, etc.) to promote my candidacy for the Kentucky Retirement System Board of Trustees.

Section 150 of the Kentucky Constitution provides, in pertinent part, as follows:

[I]f any corporation shall, directly or indirectly, offer promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities ...

(Emphasis added.)

The General Assembly codified Section 150 at KRS 121.025 and KRS 121.035. As explained above, Section 150 of the Kentucky Constitution, KRS 121.025 and KRS 121.035 do not apply to an election to the Kentucky Retirement System Board of Trustees.

Mr. William A. Thielen
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This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director